

REMARKS

Claims 1-4, 6-15, 17-41 and 43-48 are pending.

Claims 14-15 and 19-41 have been withdrawn in view of a restriction requirement.

I. 35 USC §112, first paragraph

Claims 1-4, 6-13, 17, 18 and 43-48 are rejected as failing to comply with the written description requirement. Claims 6 and 7 were amended previously to recite "weight average".

In Claim 7, the term "weight average molecular weight" has been changed to "average molecular weight ... as determined via conventional gel permeation chromatography". Page 9 of the application discloses molecular weight determined via conventional gel permeation chromatography. Regardless of whether applicant considers weight average molecular weight the default parameter for the types of molecules being claimed, in the absence of interpreting the application as implying average molecular weight to be a weight average, applicants submit the term average molecular weight covers any average molecular weight that at the time the application was filed could be determined via conventional gel permeation chromatography. Such average molecular weights are readily determinable. Thus, it is respectfully submitted applicant had possession of this category of average molecular weight since page 9 of the application discloses molecular weight determined via conventional gel permeation chromatography. Moreover, although the following is a doctrine for Section 112, second paragraph, Applicant notes breadth is not indefiniteness. MPEP 2173.04.

In Claim 6, the term "weight average" has been removed to restore it to its originally filed form. In contrast, to original Claim 5 (now cancelled) which recited average molecular weight, original Claim 6 was not an average molecular weight. Original Claim 6 recited an actual molecular weight. When originally filed base Claim 1 did not recite molecular weight. It is permitted for original dependent claim 5 to recite average molecular weight and original dependent claim 6 to recite actual molecular weight. Both are measurable. This is no different than if one dependent claim recited degrees Centigrade and a separate dependent claim recited degrees Fahrenheit. Again, both are measurable. Moreover, under the doctrine of claim differentiation there is a presumption that different claim terms mean different things.

Accordingly Claim 6 is amended to be in independent form to not depend from a claim reciting average molecular weight.

II. 35 USC §112, second paragraph

Claims 1-4, 6-13, 17, 18 and 43-48 are rejected under 35 USC §112 as being indefinite. The Office action asserts the term “about” is indefinite.

This rejection is respectfully traversed. It is respectfully submitted the term "about" is acceptable. MPEP 2173.05(b).

III. Comments on Fink et al. (US 4,542,175)

Claims 1-13, 17-18 and 43 were rejected under 35 USC §102 as being anticipated, or in the alternative under 35 USC 103 as being unpatentable, in view of Fink et al. (US 4,542,175) in a prior Office action (mailed September 10, 2007). Although this rejection appears to have been withdrawn Applicants have the following comments.

The Fink et al., Abstract and col. 2, lines 44-45, states its synthetic polymer has a molecular weight of at least 500,000. Fink et al. discloses polymers that must have a thickening effect and discloses having a molecular weight of at least 500,000 is necessary for a thickening effect (col. 3, lines 15-17 of Fink). Fink does not expressly state its molecular weight is an average or actual molecular weight. Thus, it is submitted on its face it is an actual molecular weight. If Fink et al.'s polymers have a molecular weight of at least 500,000 then the average by any calculation method is at least 500,000.

In contrast, present independent Claim 7 is directed to polymers having an average molecular weight as determined by conventional gel permeation chromatography of 10,000 to 300,000, a range which is distinct from "at least 500,000".

Moreover, one of ordinary skill would not have found the polymer of claim 7 to be obvious in view of the disclosure of Fink, because Fink explicitly teaches away from polymers having a molecular weight lower than 500,000. Except for Claim 6, all the other claims under consideration depend from Claim 7.

Independent Claim 6 recites an actual molecular weight of about 10,000 to about 100,000 daltons which is well below the molecular weight of the Fink et al. polymers having an actual molecular weight of at least 500,000.

IV. Conclusion

In view of the current amendments to the claims and the reasons set forth above, it is respectfully submitted that all objections and rejections have been overcome. Thus, a Notice of Allowance is respectfully requested.

Respectfully submitted,

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Date: November 11, 2008

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ATTORNEY DOCKET NO. 8439.004.USCP00

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